

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV. 5 1993

In the Matter of)
)
AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY)
)
Petition for the Establishment)
of Additional Standards to Govern)
Study Area Boundary Changes in)
Connection with the Transfer of)
Service Territories Between or)
Among Local Exchange Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RM-8334

AT&T REPLY

Pursuant to the Commission's September 20, 1993 Public Notice (DA 93-1128), American Telephone and Telegraph Company ("AT&T") replies to the comments in opposition to its petition for a rulemaking to establish additional standards governing study area boundary changes in connection with sales of high cost local exchanges by local exchange carriers ("LECs").¹ The opposing comments claim either that there is no need for additional standards, or that recent actions have mooted the need for a rulemaking. The commenters are wrong on both counts.

AT&T's petition demonstrated that, with the advent of price cap regulation, many LECs regulated under that regime have announced plans to sell their high cost

¹ The commenters on AT&T's petition are listed in Appendix A.

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local exchanges to other carriers. Unless remedial action is taken by the Commission, the cumulative effect of this enormous volume of sales could be to increase the Universal Service Fund ("USF") by hundreds of millions of dollars above its current level, which is already a matter of serious concern to the Commission.² AT&T's petition therefore requested that the Commission initiate a proceeding to adopt additional criteria for addressing study area boundary waivers related to such high cost exchange sales, including requiring the LECs to submit detailed informational filings in connection with these transactions and capping the amount of the acquirer's additional USF support before that carrier undertakes any upgrades to the acquired local exchange.

Predictably, the LECs deny the need for changes in the Commission's waiver procedures with respect to study area boundaries. These parties fail, however, to rebut AT&T's showing that the increasing volume of sales of high cost local exchanges experienced to date, which

² See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 93-435, released September 14, 1993 ("September 14 NPRM"). As the Commission pointed out there, the USF has increased from a 1986 level (if fully phased in) of approximately \$445 million to a 1993 level at full transition of at least \$704 million. This equates to an average annual growth rate of 7 percent, and cumulative growth of 60 percent in the size of the fund. Id., ¶¶ 11-12

can be expected to grow even further in future years, poses a serious peril to the Commission's efforts to contain the size of the USF and requires prompt corrective action.

As a threshold matter, none of the commenters challenges AT&T's showing (Petition, p. 5 and n.7) that the advent of price cap regulation has created new and powerful economic incentives for price cap LECs selectively to sell high cost local exchanges in their service territories to other carriers. As a result, as many as 1,800 high cost exchanges may be offered for sale by price cap LECs in the next few years.³ Nor can these parties seriously dispute the fact that, even in the absence of these transactions, the growth of the USF has already reached an alarming level. Indeed, for this very reason the Commission less than two months ago proposed temporarily capping the growth of the USF while it conducts a rulemaking to perform "a full examination of USF issues" and to consider permanent changes in the high cost fund rules.⁴ Against this background, it is clear that it is fully appropriate for the Commission to take

³ Petition, pp. 5-6. This estimate is based on AT&T's analysis of the price cap LECs' publicly disclosed plans, as well as confidential discussions with other price cap LECs.

⁴ See September 14 NPRM, supra.

immediate action to revise its procedures to address study area waivers that may further inflate the USF by hundreds of million of dollars annually.⁵

Commenters assert that AT&T's request for a rulemaking on study area waiver standards is superfluous because those issues will allegedly be addressed as part of the USF rulemaking announced in the September 14 NPRM.⁶ The commenters' facile prediction is unsupported; in fact, the Commission has not yet delineated the issues which will be addressed in that rulemaking. However, that proceeding will focus on adopting additional regulations to moderate USF growth; by contrast, the focus of AT&T's rulemaking petition is on establishing new standards for evaluating requests for

⁵ AT&T estimated that the potential total impact on the USF of high cost exchange sales could reach \$400 million. Petition, p. 8. Several commenters question the basis for AT&T's estimate. See, e.g., CHA, p. 2; NECA, p. 4; NRTA, p. 6; NTCA, p. 2; U S WEST, p. 5, n.14. AT&T's estimate was developed by extrapolating the projected USF impact of sales by one of the major price cap LECs to the expected total number of sales of high cost local exchanges, developed through review of published sources and confidential conversations with price cap carriers. While this estimate is necessarily an approximation, it is clear that the impact of study area waivers for sales of high cost exchanges on the USF will be substantial, unless the Commission takes remedial action.

⁶ Rochester, p. 2; Southwestern Bell. p. 3; United, p. 2; USTA, pp. 3-4; U S WEST, p. 5.

waivers of the Commission's USF rules.⁷ There is thus no duplication between AT&T's rulemaking request and the Commission's planned rulemaking on other measures for controlling USF growth.

Several commenters⁸ also assert that the rulemaking requested by AT&T is somehow barred by the Commission's pending proposal, first raised more than three years ago, to implement procedures substantially easing study area waivers in connection with sales of high cost exchanges.⁹ However, as AT&T demonstrated in its petition (p. 4 n.4), those rule revisions were proposed at a time when the Commission had faced relatively few waiver requests relating to sales of local exchanges, and apparently expected that trend to continue.¹⁰ Moreover, those proposals were issued almost

⁷ For example, the Commission's current study area definition (see 47 C.F.R. Part 36, Appendix-Glossary) which freezes those boundaries as they existed on November 15, 1984 would, if stringently applied, effectively preclude undue growth in the USF caused by sales of high cost exchanges. The fact that the Commission increasingly is being confronted with numerous requests from LECs to waive the study area definition prescribed by the rules has necessitated AT&T's instant petition.

⁸ GTE, pp. 6-7; NECA, pp. 5-7; NRTA, p. 4; NTCA, p. 5.

⁹ See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 5 FCC Rcd. 5974 (1990) ("October 1990 NPRM").

¹⁰ As the October 1990 NPRM pointed out, during the year preceding its issuance the Commission had been called

simultaneously with -- but took no account of -- the Commission's adoption of LEC price cap regulation;¹¹ as shown above and in AT&T's petition, the LEC Price Cap Order has created powerful new incentives for those carriers to engage in massive sales of high cost local exchanges to other LECs. In light of these unanticipated developments, the record upon which the October 1990 NPRM was premised is clearly no longer relevant.¹² The rule revisions proposed in that proceeding thus are no bar to the Commission's initiation of a rulemaking to implement the procedures requested in AT&T's petition for evaluating LEC study area waivers.

The commenters also contend erroneously that AT&T's request for a rulemaking has been mooted by subsequent action by the Common Carrier Bureau.¹³ As

(Footnote continued from previous page)

upon to review only about 10 study area changes relating to all causes (including, but not limited to, sales of telephone exchanges). See id. at 5976 (¶ 10).

¹¹ See Policies and Rules Concerning Rates of Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786 (1990) ("LEC Price Cap Order").

¹² The Commission will terminate a pending rulemaking where "the passage of time, and related market changes [have] rendered the recor[d] . . . 'stale'". See FCC Terminates 15 "stale" Proceedings, 1990 FCC LEXIS 115 (January 10, 1990).

¹³ CHA, p. 7; GTE, p. 3 n.2; NECA, p. 3; NTRA, p. 5, n. 3; Pacific Companies, pp. 1-2; PTI, p. 7; Southwestern Bell, p. 2; USTA, p. 3; U S WEST, p. 2.

these parties point out, on September 7 the Bureau released a Public Notice requesting that parties submitting study area waiver requests supply certain information in connection with those applications.¹⁴ Those data substantially track the items that AT&T has requested the Commission require waiver applicants to provide in connection with sales of high cost local exchanges.¹⁵

The commenters' conclusion that the Bureau's action obviates AT&T's request for relief is misplaced for two reasons. First, the submission of the requested data was only one aspect of the relief requested in AT&T's petition, which also includes temporary capping of the additional USF support for acquired exchanges and requiring local ratepayers to assume a portion of the costs of service upgrades. See Petition p. 12 and n. 17.¹⁶ More important, however, submission of data in response to the Bureau Notice is expressly non-

¹⁴ See "Bureau Provides Suggestions for Parties Filing Study Area Waiver Requests," DA 93-1093, released September 7, 1993 ("Bureau Notice").

¹⁵ Compare Bureau Notice with AT&T Petition, pp. 10-11.

¹⁶ Additionally, AT&T requested that the Commission require any transaction that would add the acquired exchange(s) to the NECA traffic sensitive ("TS") pool to provide a detailed explanation of the anticipated impact on TS rates, due to the incentive for bypass created by the already existing disparity between NECA's rates and non-pool LECs. See Petition, p. 13.

mandatory.¹⁷ And although some commenters assert that the Bureau's request for these data has mooted AT&T's petition, other commenters object to the Bureau's action as unauthorized and dispute the need for providing that information.¹⁸ Accordingly, there is still a need for the Commission to determine whether submission of this information in connection with study area waiver requests should be mandatory to assure that there is an adequate basis for the Commission to judge the impact of those transactions on the USF.

¹⁷ See Bureau Notice, p. 1 (noting that "the Bureau is not mandating these data" be submitted by waiver applicants).

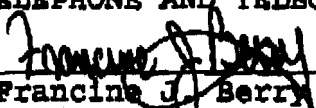
¹⁸ CHA, p. 4; GTE, p. 4; NRTA, p. 5; NTCA, p. 7; Rochester, p. 3; U S WEST, p. 3 n.8.

WHEREFORE, for the reasons stated above and in AT&T's Petition, the Commission should initiate a rulemaking to adopt additional standards for evaluating study area boundary waiver requests in connection with sales of high cost local exchanges.

Respectfully submitted,

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November 5, 1993

APPENDIX A

List of Commenters

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National Exchange Carrier Association ("NECA")
National Rural Telecom Association ("NRTA")
National Telephone Cooperative Association ("NTCA")
Pacific Bell and Nevada Bell ("Pacific Companies")
Pacific Telecom, Inc. ("PTI")
Rochester Telephone Corporation ("Rochester")
Southwestern Bell Telephone Company ("Southwestern Bell")
United and Central Telephone Companies ("United")
United States Telephone Association ("USTA")
U S WEST Communications, Inc. ("U S WEST")

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 5th day of November, 1993, a copy of the foregoing "AT&T Reply" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

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